



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,577	09/22/2005	Sylvie Pridmore-Merten	112701-597	3814
29157 K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690	7590 02/23/2010		<div>EXAMINER</div> <div>CLARK, AMY LYNN</div>	
			<div>ART UNIT</div> <div>1655</div>	<div>PAPER NUMBER</div>
			<div>NOTIFICATION DATE</div> <div>02/23/2010</div>	<div>DELIVERY MODE</div> <div>ELECTRONIC</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

### Office Action Summary

**Application No.**

10/526,577

**Applicant(s)**

PRIDMORE-MERTEN ET AL.

**Examiner**

Amy L. Clark

**Art Unit**

1655

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4-8 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-8 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Acknowledgment is made of the receipt and entry of the amendment filed on 10/21/2009 with the amendment of claims 1, 2, 4-8 and 17 and the cancellation of claim 3.

Any rejection made in the previous Office action and not repeated herein has been withdrawn based upon Applicant's amendments to the claims.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-2, 4-8 and 17 are currently pending and under examination.**

#### ***Claim Rejections - 35 USC § 102/103***

Claims 1, 2, 4-8 and 17 remain rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hamilton (B\*, US 2001/0043983 A1).

Hamilton teaches a pet food, pet treat and pet supplement composition (which reads on a pharmaceutical composition) comprising R-.alpha.-lipoic acid (which reads on a compound that upregulates the biosynthesis of cystine) in an amount of 0.10 grams to 1.5 grams and L-carnitine (which reads on a molecule that stimulates energy metabolism of a cell) in an amount of 0.10 g to 3 g in addition to the usual composition,

that co-enzyme Q (which is a type of ubiquinone and reads on antioxidant in an amount sufficient to improve hair or coat quality of an animal) can be added in the amount of at least 1 mg/day and that creatine can be added in an amount of at least 0.2 g/day (See abstract).

Hamilton further teaches that NuFood was created specifically for pet owners concerned with giving their dogs top quality nutrition and made with only the best ingredients that are suitable for human consumption (which reads on nutritionally complete human food and pet food and dietary supplement for human/animal consumption). Hamilton further teaches that NuFood is made with 100% pure chicken meat, and is prepared to provide a pure, tasty and highly digestible meal. Hamilton further teaches that NuFood further comprises corn, breadcrumbs and water (which reads on an orally acceptable carrier), and further comprises at least 0.1 grams of R- $\alpha$ -lipoic acid, at least 0.1 g L-carnitine and at least 1 mg of Q<sub>10</sub> (which is synonymous with ubiquinone or co-enzyme Q<sub>10</sub> and is known in the art to be an antioxidant) and at least 0.2 grams of creatine per day (which reads on an admixture) (See Example 6, paragraphs 0054 and 0055).

Hamilton further teaches Eukanuba Senior Maintenance (IAMS), which is formulated to help nutritionally stabilize a senior dog's digestive system and support a healthy intestinal environment comprising increased levels of antioxidants, chicken-by-product meal, corn meal, sorghum, whole grain barley, chicken, fish meal, dried beet pulp, chicken fat (which reads on orally acceptable carrier) preserved with mixed tocopherols, a source of vitamin E and citric acid (which reads on antioxidants) and

contains omega-3-fatty acids in a minimum amount of 0.25% (which reads on the limitations of claim 17) and further comprises at least 0.1 g R-.alpha.lipoic acid, at least 0.1 g of L-carnitine, and least 1 mg of Q<sub>10</sub> (which is synonymous with ubiquinone or co-enzyme Q<sub>10</sub> and is known in the art to be an antioxidant) and at least 0.2 grams of creatine per day (which reads on an admixture) (See Example 1, paragraphs 0043 and 0044).

Although Hamilton does not expressly teach that the antioxidant improves hair or coat quality of an animal or that the ingredient stimulates hair growth or that the ingredient modulates hair sebum lipid production and/or composition, the claimed functional properties are inherent to the preparation taught by Hamilton because the ingredients are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, L-carnitine combined with Q<sub>10</sub> (ubiquinone), R-.alpha. lipoic acid, and/or omega-3-fatty acid would be expected to stimulate hair growth and modulate hair sebum lipid production and/or composition and Q<sub>10</sub> (ubiquinone), R-.alpha. lipoic acid and/or mixed tocopherols would be expected to improve hair or coat quality. Therefore, the reference anticipates the claimed subject matter.

In the alternative, even if the claimed pet food composition for oral administration comprising an ingredient comprising an admixture of a molecule that stimulates energy metabolism of a cell and an antioxidant to improve hair or coat quality of an animal in an orally acceptable carrier is not identical to the pet food composition taught by Hamilton with regard to some unidentified characteristics, the differences between that which is disclosed and that which is claimed are considered to be so slight that the pet food

composition taught by Hamilton is likely to intrinsically possess the same characteristics (including with respect to the instantly claimed functional effects) of the claimed particularly in view of the similar characteristics which they have been shown to share. Thus, the claimed pet food composition for oral administration comprising an ingredient comprising an admixture of a molecule that stimulates energy metabolism of a cell and an antioxidant to improve hair or coat quality of an animal in an orally acceptable carrier would have been obvious to those of ordinary skill in the art within the meaning of USC 103. Accordingly, the claimed invention as a whole was at *least prima facie* obvious, if not anticipated by the cited reference, especially in the absence of sufficient, clear, and convincing evidence to the contrary.

With respect to the USC 102/103 rejection above, please note that the Patent and Trademark Office is not equipped to conduct experimentation in order to determine whether Applicant's claimed pet food composition for oral administration comprising an ingredient comprising an admixture of a molecule that stimulates energy metabolism of a cell and an antioxidant to improve hair or coat quality of an animal in an orally acceptable carrier is different and, if so, to what extent, from that of the pet food composition taught by Hamilton. Therefore, with the showing of the reference, the burden of establishing non-obviousness by objective evidence is shifted to the Applicants.

### ***Double Patenting***

Claims 1, 2, 4 and 5 remain provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 and 12 of copending Application No. 10/527,097 and 18, 19 and 40 of copending Application No. 10/597,436. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in all three applications are drawn to an orally administered composition comprising of a molecule that stimulates energy metabolism of a cell and/or an antioxidant to improve hair or coat quality of an animal in an orally acceptable carrier.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Response to Arguments***

Applicant's arguments concerning the 35 U.S.C. § 102(b)/103(a) rejection above have been thoroughly considered but are not deemed persuasive of error in the rejection.

Applicant argues that Hamilton fails to disclose or suggest a pet food composition comprising an antioxidant, wherein the antioxidant is selected from the group consisting of cystine, S-adenosyl-methionine, a compound that upregulates the biosynthesis of cystine or S-adenosine-1-methionine in vivo, tea catechins, coffee extracts containing polyphenols and diterpenes, grape or grape seed extracts rich in proanthocyanidins,

spice extracts, soy extracts and other sources of flavonoids with antioxidant activity, ursodeoxycholic acid, ursolic acid, ginseng, ginsenosides and natural sources thereof, and combinations thereof as required, in part, by currently amended independent Claim

1. Applicant further argues that Hamilton is deficient because it fails to teach or even suggest the presently claimed antioxidants in combination with a molecule that stimulates energy metabolism of a cell, that Hamilton fails to even recognize the benefits of the specific combinations of the currently amended claims and that Hamilton fails to recognize that the combination of a molecule that stimulates energy metabolism of a cell in combination with specific antioxidants may be used to improve the coat quality in pets.

However, this is not found persuasive because Hamilton teaches a pet food, pet treat and pet supplement composition (which reads on a pharmaceutical composition) comprising R- $\alpha$ -lipoic acid (which reads on a compound that upregulates the biosynthesis of cystine), L-carnitine (which reads on a molecule that stimulates energy metabolism of a cell), co-enzyme Q (which is a type of ubiquinone and reads on antioxidant in an amount sufficient to improve hair or coat quality of an animal), creatine and omega-3-fatty acid. Therefore, the combination of ingredients taught by Hamilton are identical to the combination of ingredients claimed by Applicant and the ingredients were known to be administered in an identical manner to that claimed by Applicant. Therefore, each ingredient would intrinsically/inherently be expected to have the instantly claimed effect and would be expected to work in combination with one another to improve coat quality in pets. Therefore, the rejection remains for reasons of record.



Applicant's arguments concerning the double patenting objection above have been thoroughly considered but are not deemed persuasive of error in the rejection.

Applicant argues that, at this stage in prosecution, it would be premature to file a terminal disclaimer because the instant claims have not yet been allowed, and thus, the final version of these claims is not yet known. Applicant further argues that the claims of co-pending U.S. Serial Nos. 10/527,097 and 10/597,436 may also be amended to include subject matter not contained in the claims of the present application and that at such time when the claims of any of the pending applications become allowed, Applicants will reassess the double patenting rejection in view of the allowed claims.

However, this is not found persuasive because the claims filed in co-pending U.S. Serial Nos. 10/527,097 and 10/597,436 are similar to the claims that are examined in this Application and raise double patenting issues. Therefore, the provisional double patenting rejection remains for reasons of record.

### ***Conclusion***

**No claims are allowed.**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571)272-1310. The examiner can normally be reached on Monday to Friday between 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Amy L Clark/  
Examiner, Art Unit 1655